

THE CHARTER BOARD OF THE CITY OF READING

IN RE:           Investigation of                       :           Complaint Filed: March 11, 2019  
                  Glenn Steckman and                 :  
                  Mayor Wally Scott                 :           Investigation No. 53  
  :

**FINAL OPINION AND ORDER**

**I.     FINDINGS OF FACT**

**A.     The Complaint and Investigation**

1.     On or about March 11, 2019, Ernest H. Schlegel, a resident of the City of Reading, filed a Charter Board complaint ("Complaint") against the Mayor of the City of Reading, Wally Scott ("Mayor Scott"), Glenn Steckman ("Steckman"), a former Managing Director of the City, and Osmer S. Deming, Esquire, who currently serves in the role of Managing Director of the City.

2.     The Complaint alleged violations of the City's Home Rule Charter ("Charter") and Administrative Code at a) Section 607 of the Charter; b) Administrative Code Sec. 5-401; and c) Administrative Code Sec. 5-803.

3.     Thereafter, on or about May 7, 2019, the Board's Investigative Officer notified the three subjects and the Board that she intended to dismiss the Complaint as to Osmer S. Deming, Esquire.

4.     Pursuant to the Charter Board Ordinance, Bill No. 46-2005, *as amended*, ("Ordinance") the Investigative Officer issued a timely Findings Report upon the two remaining subjects, Mayor Scott and Steckman (together, "Subjects").

5. On or about August 26, 2019 Mayor Scott and Steckman, through counsel, Acting City Solicitor Frederick T. Lachat, III, requested an evidentiary hearing. *See* Ord. at Sec. V(A)(7).

6. By letters of September 12 and 13, 2019, the Board scheduled a hearing, ultimately, for October 8, 2019 and additional hearing dates on October 9 and 10, 2019.

7. Both of the remaining Subjects released Acting City Solicitor Lachat as counsel and retained new counsel.

8. New counsel, Attorney Mark Merolla, for Mayor Scott, and Attorney Thomas A. Rothermel, for Steckman, jointly requested a continuance of the October 8, 9 and 10 hearing dates.<sup>1</sup>

9. All proposed dates provided by the subjects for a continued evidentiary hearing were in excess of 45 days from the date of the Subjects' request for same.

10. On the Subjects providing waivers of the 45 day period in which to hold a hearing, the Board granted the continuance request.

**B. October 15, 2019 Hearing Date**

11. By letter of October 2, 2019, the Board noticed the continued dates of October 15, 2019 and October 30, 2019 for the hearing of this matter.

12. At the October 15, 2019 hearing, the Investigative Officer and counsel for Steckman, Attorney Rothermel, presented the Board with a proposed stipulation and an agreed, proposed penalty, in preliminary form, stated only orally on the record. *See* Oct. 15, 2019 N.T., *generally*, pp. 3-13. *Id.* at pp. 13-20.

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<sup>1</sup> An evidentiary hearing must be held within 45 days of the subject requesting same. Charter Board Ordinance, Bill No. 46-2005, Sec. V(A)(7)(a).

13. Also, at the October 15, 2019 hearing, the Investigative Officer and counsel for Mayor Scott, Attorney Merolla, presented the Board with a proposed stipulation also in preliminary form and stated only orally on the record. *Id.* at pp. 14-24

14. Because Steckman and the Investigative Officer offered only proposed stipulated facts to the Board at the hearing, the Board received no testimony or exhibits on October 15, 2019.

15. Thereafter, on or about October 21, 2019 the Investigative Officer and Attorney Rothermel submitted to the Board a document styled *Stipulated Findings of Fact and Recommended Penalty* (“Steckman’s Stipulated Facts”) executed by them.

16. However, Mayor Scott did not circulate and reach final agreement with the Investigative Officer on the proposed stipulation orally proposed to the Board on October 15, 2019.

17. On or about October 25, 2019, counsel for the Mayor advised the Investigative Officer that the Mayor would not make the stipulations as he had offered, through counsel, on October 15, 2019 and that the October 30, 2019 hearing would proceed.

**C. October 30, 2019 Hearing Date**

18. The Board held a hearing on October 30, 2019, the second reserved hearing night, for the conduct of the evidentiary hearing on the Complaint as alleged against the Mayor.

19. Again, the Investigative Officer and counsel for Mayor Scott presented the Board with a proposed stipulation; however, counsel had now prepared for the Board a final and fully executed document styled *Stipulated Findings of Fact* (“Mayor’s Stipulated Facts”).

20. The Investigative Officer offered the Mayor's Stipulated Facts as Joint Exhibit #1, which the Board admitted into evidence.

21. The Mayor then offered three exhibits marked as Subject #1, titled Affidavit of Mayor Scott, Subject #2, Steckman's Stipulated Facts, and Subject #3, a thumb-drive containing 300 pages of documents in PDF format.

22. The Mayor offered Subject #2 and Subject #3 as mitigation evidence for the Board to consider in fashioning an appropriate penalty. Oct. 30, 2019 N.T. at pp. 12-13.

23. The Board admitted Subject #2 and Subject #3 into evidence.

24. The Board refused admission of Subject #1 into evidence in as much as a) the Joint Exhibit #1, i.e. the Mayor's Stipulated Facts, were already reached and entered into evidence and stipulated the facts upon which the matter would proceed, b) the Investigative Officer advised that, chronologically, the stipulated facts were negotiated and signed, and then followed by surprise with the Mayor's purported affidavit, c) the affidavit is hearsay and contains hearsay within hearsay, d) given that the Mayor had already stipulated to the facts contained within Joint Exhibit #1, which were jointly offered into evidence, the affidavit, under all of the circumstances, appeared not relevant, unreliable and self-serving, and e) the production of the affidavit just hours, or less, before the October 30, 2019 hearing date and after reaching a stipulation on the facts to be presented to the Board, was prejudicial to the Investigative Officer and inimical to the resolution of the facts to which the Mayor and the Investigative Officer had already stipulated by Joint Exhibit #1.

25. As the Mayor and the Investigative Officer reached stipulated facts, reduced to writing, i.e. Joint Exhibit #1, the Board took no testimony at the October 30, 2019 hearing date.

**D. Steckman's Stipulated Facts**

26. From May 23, 2016 until September 5, 2018, Steckman served as Managing Director for the City of Reading.

27. On March 24, 2016, Mayor Scott appointed Human Resources Manager Josephina Encarnacion ("Encarnacion") as Acting Administrative Services Director.

28. Encarnacion served as Acting Administrative Services Director through January 2017 when Steckman took over as Acting Administrative Services Director as part of his service as Managing Director.

29. Encarnacion served as Acting Administrative Services Director in excess of 180 days during Steckman's tenure as Managing Director.

30. The Charter permits an Acting Department Director to serve only 180 days without approval by City Council.

31. Council never approved Encarnacion to continue to serve as Acting Administrative Services Director beyond the 180 day period.

32. Steckman as Managing Director did not take any action to remove Encarnacion as Acting Administrative Services Director at the expiration of the 180 day period.

**E. Mayor's Stipulated Facts**

33. Mayor Scott took office as Mayor of the City of Reading in January 2016.

34. On March 24, 2016, Mayor Scott appointed Human Resources Manager Josephina Encarnacion as Acting Administrative Services Director.

35. At the time of Encarnacion's appointment as Acting Administrative Services Director, the City did not have a Managing Director.

36. Encarnacion served as Acting Administrative Services Director through January 2017 when Steckman, during his term as Managing Director, began serving as Acting Administrative Services Director as part of his employment as Managing Director.

37. Encarnacion served as Acting Administrative Services Director in excess of 180 days.

38. At the conclusion of Encarnacion's 180 days of service as Acting Administrative Services Director, Mayor Scott did not request of City Council to adopt a resolution agreeing to extend Encarnacion's time as Acting Administrative Services Director for an additional 90 days.

39. Mayor Scott did not remove or require removal of Encarnacion upon expiration of her 180 days of service as Acting Administrative Services Director.

40. In February 2019, Mayor Scott appointed Jamar Kelly ("Kelly") as Administrative Services Director for the City of Reading and City Council approved Kelly by Resolution Number 17-2019 on or about February 25, 2019.

41. City Council's Resolution No. 17-2019 made Kelly's appointment as Administrative Services Director effective May 18, 2019.

42. City Council established Kelly's salary as Administrative Services Director at the rate of Ninety-Six Thousand and 00/100 Dollars (\$96,000.00) by enactment of Bill No. 8-2019 on March 11, 2019.

43. City Council established the salary of the prior Administrative Services Director, Matthew Bembenick, appointed in June 2012 and resigned in March 2015, at the rate of Ninety Thousand and 00/100 Dollars (\$90,000.00) by Bill No. 65-2012 enacted on June 14, 2012.

## II. CONCLUSIONS OF THE BOARD

### A. Questions Presented

1. Do the Managing Director and the Mayor violate the Administrative Code, Sec. 5-803(A), for permitting, without removal, an acting department head to serve more than 180 days from appointment, unless City Council may agree to extend said term for an additional ninety-day period by resolution upon request by the Mayor and upon satisfactory proof that the Mayor and/or Managing Director have made a diligent effort to recruit and hire a department head?

Answer: *The Board answers that both the Managing Director and the Mayor, by allowing service of an acting department head beyond 180 days from the date of appointment, violate the Administrative Code, unless a ninety-day extension is secured by the Mayor in full compliance with Section 5-803(A) of the Administrative Code.*

2. Is it material in this matter, in finding a violation of Section 5-803(A), whether the Mayor made the initial appointment of the Acting Administrative Services Director, and not the Managing Director?

Answer: *The Board answers, that under Amendment I, Sec. 1(a), of the Charter, it is not material in this matter whether the Mayor or the Managing Director made the initial appointment of the Acting Administrative Services Director in considering whether a violation of Sec. 5-803(A) occurred for non-removal after exhaustion of the 180 day period.*

3. Does a Mayor violate the Administrative Code, Sec. 5-803(A), by allowing an acting department head to serve beyond the initial 180 day period and not requesting of City Council an extension of the term of the acting department head for an additional ninety-day period by resolution and not providing satisfactory proof that the Mayor and/or Managing Director have made a diligent effort to recruit and hire a permanent department director?



Answer: *The Board answers that by allowing an acting department head to serve beyond the initial 180 day period and not requesting an extension from City Council and not offering satisfactory proof of a diligent recruitment effort, a Mayor does violate the Administrative Code, Sec. 5-803(A).*

4. Does a Managing Director violate Charter Sec. 406,<sup>2</sup> including subparts (1), (2), (8), and (9), by not removing an acting department head serving beyond 180 days from the date of appointment and without the Mayor securing a ninety-day extension as provided by Administrative Code, Sec. 5-803(A)?

Answer: *The Board answers that a Managing Director does violate Charter Sec. 406, including subparts (1), (2), (8), and (9), by not making such removal.*

5. Does a Mayor violate Charter Sections 301, and 308(a), (e), (g), (h), (i), (m), and (n), by not removing an acting department head serving beyond 180 days from the date of appointment and without securing a ninety-day extension by resolution of City Council and not providing evidence of a diligent recruitment effort as provided by Administrative Code, Sec. 5-803(A)?

Answer: *The Board answers that a Mayor does violate Charter Sections 301, and 308(a), (e), (g), (h), (i), (m), and (n), by not making such removal.*

6. Does a Mayor violate Charter Section 607 by not engaging in a timely and diligent search for, and not making an appointment of, a qualified Administrative Services Director candidate?

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<sup>2</sup> See also, Admin. Code. Sec. 5-401(A).



Answer: *The Board answers that a Mayor does violate Charter Section 607 by not making a diligent search for, and not making an appointment of, a qualified Administrative Service Director candidate.*

7. Is it is “diligence” for a Mayor to commence a search for an Administrative Services Director two years and three months after the beginning of a Mayor’s term, and making an appointment over three years from a Mayor taking office?

Answer: *The Board answers that such is not “diligence.”*

**B. Discussion**

The Investigative Officer’s findings of fact are limited to only facts, and not conclusions of law. *See* Charter Board Ordinance, Sec. V(A)(6). *See also Reading City Council v. City of Reading Charter Bd.*, 2012 Pa. Commw. Unpub. LEXIS 799 \*20-\*23. It is the Board’s the practice to permit the entry of stipulated findings of fact by the Investigative Officer and a subject in the circumstance where a subject requests an evidentiary hearing on the facts found by the Investigative Officer, and later, prior to the hearing, the subject stipulates to those facts. In appropriate circumstances, the Board has treated this practice as an administrative settlement, leaving the Board to determine if, on the facts found or stipulated, any violations of the Charter or Administrative Code occurred, and the penalty. It is the Board’s province alone to determine violations of the Charter and Administrative Code, and the penalty. Charter, Amd. I, Sec. 2(b); Charter Board Ordinance, Sec. III(A). Although the Investigative Officer may include conclusions within a findings report, or within a report of stipulated facts, the Board is not bound by them. *Reading City Council*, at \*23.

Here, the facts are stipulated, and the essential violations arising from those facts are that the powers and duties of Managing Director and of the Mayor specified under the Charter were not utilized, resulting in a violation of the Administrative Code, Sec. 5-803(A) as detailed herein.

Overarching the Subjects actions, or inactions, whatever their purpose or intent, is Charter Amendment I, Sec. 1(a), relating to the supremacy of the Charter. This critical amendment to the Charter provides:

**Section 1.      Supremacy of Charter**

**a.) Governing law of the City.** This Charter is the governing law of the City of Reading. No action or inaction by City Council, the Administration, or any other body created by this Charter shall be taken contrary to it, whether individually or collectively, by ordinance, resolution, practice, executive order or decision, or any other means.

The wording of the Charter, and acts pursuant to it, shall in all cases be strictly construed so as to effectuate its clear intent.

Steckman and Mayor Scott may not by action, or inaction, proceed contrary to the Charter. It is fundamental that one may not cause to be done indirectly, what one may not cause to be done directly.<sup>3</sup> Said another way, and as confirmed by Amendment I of the Charter, whether the cause of a Charter violation is by action, or inaction, or direct or indirect conduct, the Charter is still violated.

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<sup>3</sup> Such a course of conduct is prohibited. *Macallen Co. v. Commonwealth of Massachusetts*, 279 U.S. 620 (1929) (citing the “well established rule” that what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation); *Frank M. Fairbank v. United States*, 181 U.S. 283 (1901) (citing the same as a “great principle”); *Harrisburg City Pass. Railway Co. v. City of Harrisburg*, 149 Pa. 465, 24 A. 56 (1892) (“It need hardly be remarked that, if the city of Harrisburg cannot directly prevent the exercise of the rights guaranteed to the [Railway] by its [corporate] charter, it cannot accomplish this in an indirect manner.”). *See also generally* *M. B. Investments v. McMahon*, 903 A.2d 642, 646-47 (Pa. Commw. Ct. 2006), *app. den’d* 2007 WL 621938 (Pa.) (finding option agreement to be a de facto agreement of sale); *Mukerji v. City of Reading Charter Rev. Bd.*, 941 A.2d 102, 104-05 (Pa. Commw. Ct. 2008) (mere change in title does not avoid application of the Charter’s residency requirement).

**A. Glenn Steckman**

Steckman served in the appointed Office of Managing Director of the City of Reading from June 2016 until on or about September 14, 2018 when Mayor Scott terminated Steckman from his position. The Charter required that Steckman, as Managing Director, be responsible to the Mayor for all matters placed in the Managing Director's charge. Charter Sec. 406. Section 406 also requires that the Managing Director:

(1) Execute and enforce the provisions of this Charter and all ordinances, resolutions, and motions of City Council;

(2) Direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this Charter or by law;

\* \* \*

(8) Present to the Mayor from time to time such information concerning the business and affairs of the City as the Managing Director may deem necessary, or as City Council by motion may request; and recommend such measures for legislative action as are believed to be in the best interests of the City; and

(9) Perform such other duties as are specified in this Charter or may be required by the Mayor or City Council.

Nonetheless, it is inescapable that the Managing Director position is appointed, serving at the pleasure of the Mayor, responsible to the Mayor, and under the Mayor's direction. In other words, the Mayor is the *elected* executive, not the subordinate *appointed* administrator. Compare Charter Secs. 301 and 406.

**B. Mayor Wally Scott**

Mayor Scott is the *elected* executive of the City of Reading, pursuant to Charter Article III. It is in him that the people of Reading invested their *trust* as expressed in the general election of 2015. The Charter vests the "executive, administrative, and law enforcement powers of the City . . ." in the Mayor. Further, the Mayor "*shall control and be accountable for* the executive branch

of City government . . . .” Charter, Art. III, Sec. 301 (emphasis added). Charter Section 308 charges the Mayor with certain powers and duties.

It is mandatory upon the Mayor under Charter Section 308 to:

(a) Execute, enforce, and obey the ordinances of the City and laws of the Commonwealth of Pennsylvania and the United States of America.

\* \* \*

(e) Introduce proposed legislation to Council and make recommendations to City Council concerning the affairs of the City.

\* \* \*

(g) Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by the Charter or by law.

(h) Ensure that all laws, provisions of this Charter and acts of City Council, subject to enforcement by the Managing Director, are faithfully executed by the Managing Director.

(i) Be responsible for the establishment and development of administrative policy to be implemented by the Managing Director.

\* \* \*

(m) Unless otherwise provided, be responsible for the employment of personnel necessary for the effective operation of City Government.

(n) Perform such other duties and exercise such other powers as stated in this Charter, by law, or ordinance.

As pertinent to this matter, the duties stated above are mandatory, and required by the officeholder of the Office of Mayor of the City of Reading.

Further, the Mayor has all appointment powers, and, importantly in this matter, unfettered removal powers over, among others, an acting department head, such as Encarnacion. *See* Charter Sec. 603(a) and (b). Finally, the Charter specifically provides for the mandatory appointment of a qualified Administrative Services Director by the Mayor. Charter Sec. 607.

These duties stated above are mandatory and required by the officeholder of the Office of Mayor of the City of Reading.

**C. Conclusions of Law**

1. As Managing Director, the Charter charged Steckman with responsibility for the Administration of the City, including executing and enforcing the provisions of this Charter, supervising the administration of all departments, appointing, suspending, or removing any City employee, except as otherwise provided by this Charter or by law and perform such other duties as are specified in this Charter. Department Directors serve under the direction and supervision of the Managing Director. *See* Charter, Art. IV, *including sections cited above.*<sup>4</sup>

2. Pursuant to Charter Article VI entitled “Administration”, Section 603, entitled “Heads of departments, offices, and agencies” and City of Reading Code of Ordinances, Chapter 5 entitled “Administrative Code”, Part 8 entitled “Department Organization”, Section 803 entitled “Department Directors”, the Mayor, with the approval of Council, is responsible for the appointment and removal of Department Directors.

3. Section 607 of the Charter entitled “Department of Administrative Services,” specifically provides for the appointment of the Administrative Services Director by the Mayor.

4. The Mayor is further responsible for employment of personnel necessary for operation of City government, overseeing the administration of all departments as supervised by the Managing Director, and ensuring all laws and provisions of the Charter subject to enforcement by the Managing Director are faithfully executed under the City of

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<sup>4</sup> *See also* footnote 2.

Reading Charter, Article III entitled “Executive Branch”, Section 308 entitled “Powers and Duties of the Mayor” and the City of Reading Code of Ordinances, Chapter 5 entitled “Administrative Code”, Part 3 entitled “Mayor, Chief Executive Officer”, Section 301.

5. Under the City of Reading Code of Ordinances, Chapter 5 entitled “Department Directors”, Letter A. (Section 5-803(A)), Acting Department Directors appointed by the Managing Director may only serve 180 days.

6. Pursuant to Section 5-803(A), an acting department director may serve an additional ninety (90) days, beyond the initial 180 day period, only if approved by resolution of City Council upon a request by the Mayor and proof that the Mayor is making a diligent effort to recruit and hire a department director.

7. Both Steckman and Mayor Scott violated the aforementioned Charter and Administrative Code provisions, and failed to exercise the powers and responsibilities vested in each of them as Managing Director and as Mayor, respectively.

### **III. DETERMINATION OF THE BOARD**

In accordance with the Steckman Stipulated Facts and the Mayor’s Stipulated Facts, the Board determines that:

#### **A. Glenn Steckman**

As to Steckman, in a) failing to remove Encarnicion as Acting Administrative Services Director at the expiration of the 180 day period permitted by Administrative Code, Sec. 5-803(A), and b) failing to execute and perform the duties and obligations of the Office of Managing Director in connection with the facts stipulated, Steckman did violate the Charter, Article IV, Sec. 406, including subparts (1), (2), (8) and (9) and the Administrative Code Sec. 5-803(A).



**B. Mayor Scott**

As to Mayor Scott, in a) failing to remove Encarnicion as Acting Administrative Services Director at the expiration of the 180 day period permitted by Administrative Code Sec. 5-803(A), b) failing to obtain a 90 day extension of the 180 day period in accordance the Administrative Code Sec. 5-803(A), c) failing to make a diligent search for an Administrative Services Director for a period of more than a year, ending in approximately April 2018, and d) failing to execute and perform the duties and obligations of the Office of Mayor in connection with the facts stipulated, the Mayor did violate the Charter, Article III, Secs. 301, 308, including subparts (a), (e), (g), (h), (i), (m), and (n), 603(a) and (b), and 607, in addition to Administrative Code Sec. 5-803(A).

**IV. PENALTIES IMPOSED**

The Board's enabling ordinance provides that:

Before the imposition of any penalty (as opposed to restitution or other remedy) the Board shall consider the following factors and address the relevant factors in its Final Order:

- a. The seriousness of the offense,
- b. The substantive effect the offense has on the application of the Charter and its purposes,
- c. Whether the subject of the complaint has had previous decisions entered against him/her by the Board,
- d. The number of violations involved,
- e. Whether the violations were the result of willful or intentional conduct, recklessness, negligence, oversight or mistake,
- f. The consequences of the violation,
- g. Whether or not the conduct of the subject violates any other statute, act or law, and
- h. Any other factors relevant in determining the type and severity of the penalty to be imposed.

*See Charter Board Ordinance, Bill No. 46-2005, as amended, Section V(B)(2)(a)(i).*



**A. As to Glenn Steckman, Former Managing Director**

**1. Private Admonition**

On the above facts, the Investigative Officer and the subject, Steckman, offered to the Board that a penalty of private admonishment against Steckman is appropriate for his failure to remove Encarnacion as Acting Administrative Services Director upon expiration of her service of 180 days as Acting Administrative Services Director. The Board agrees. Steckman's private admonishment shall consist of a letter to Steckman advising of the Board's Final Opinion and Order, enclosing same, notifying Steckman of the violation and penalty stated herein, and advising that the Final Opinion and Order is a public record. *See* Bill No. 46-2005, Sec. V(C)(2)(a) *and* Bill No. 16-2013.

**2. Considerations of the Board**

Although Steckman and the Investigative Officer jointly recommended the penalty of a private admonition, *see* Steckman's Stipulated Facts at paragraph "L," the Board must consider each of the factors set forth in Section V(B)(2)(a)(i) of the Ordinance. The Board is free to reject a joint recommendation as to a penalty.

Regarding the first factor, the offense is serious in that Steckman continued to permit an important office within City government, here the Acting Administrative Services Director, to be filled by a candidate un-reviewed and un-confirmed by City Council. Steckman also allowed Encarnacion to serve beyond the period permitted by the Administrative Code. This conduct also implicates the second factor in this consideration, as Steckman ignored the Charter, the Administrative Code and his appointed duties as Managing Director, undercutting City governance.

The third and fourth factor are neutral as to Steckman, in that he has no prior Charter violations brought to the attention of the Board and this matter involves essentially a singular violation against him, regarding the service of Encarnacion as Acting Administrative Services Director beyond the expiration of 180 days of service, without causing her removal.

On the fifth factor, there is little evidence in the record regarding intent by Steckman. In the Board's view, Steckman's conduct is no less than negligent in as much as he served as the chief administrative officer of the City, and his duties, and the tenures of his subordinates, are clearly stated. There is no evidence of willful, intentional or recklessness by Steckman. Oversight or mistake, in this instance, appear to not apply.

Addressing the sixth factor, the consequences of the violation have not abated, meaning, the violation cannot be cured. The violation can be corrected, yes, but the time where a person improperly serves as a department head cannot be recouped. Here, there is no record on which the Board may make a determination of the consequences of this particular violation, other than the obvious effects of the erosion of the Charter by the chief administrator of the City. Regarding the seventh factor, there are no facts that demonstrate that the "conduct of the subject violates any other statute, act or law." Finally, there are no other factors relevant to the Board in determining the type and severity of the penalty, except to note that Mayor Scott terminated Steckman in September 2018 from his employment with the City and that Steckman is Mayor Scott's subordinate.

**B. As to Mayor Scott, Mayor of the City of Reading**

**1. Public Censure and Fine**

The Investigative Officer and Mayor Scott did not agree to a recommended penalty. Based on the above facts, as to the Mayor, the Board determines that public censure<sup>5</sup> is the most appropriate penalty, together with an administrative fine of \$1,000.00.<sup>6</sup> The Board is also empowered to impose up to a \$1,000 fine per violation, *see* Section V(B)(2)(a)(i)(f), and does impose a fine under that authority in the amount of \$500.00. The Board will issue the penalty of public censure as provided for in the Ordinance and require payment of the \$1,000 administrative fine and the \$500.00 penalty fine within thirty (30) days of the date of the Board's Order attached hereto.

**2. Considerations of the Board**

Regarding the first factor, the offense is serious in that the Mayor filled an important office within City government, here the office of Administrative Services Director, with an acting candidate un-reviewed and un-confirmed by City Council and allowed the candidate to serve beyond the period permitted by the Administrative Code. This conduct also implicates the second factor in this consideration, as the Mayor ignored the Charter, the Administrative Code and his duties as Mayor. He is the elected chief executive of the City and the Mayor's conduct undercut effective government in the City.

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<sup>5</sup> Charter Board Ordinance, Section V(B)(2)(a)(i)(b) provides:

b. Public Censure, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, and the news media indicating that a violation of the Charter or Administrative Code took place and that the Board strongly disapproves of the public official's or public employee's actions.

<sup>6</sup> As a penalty, the Board may impose an administrative fine of up to \$1,000 to defray the actual cost and expense of investigating any violation. Charter Board Ordinance, Section V(B)(2)(a)(i)(g).

Although the third factor is positive for the Mayor, the fourth factor is negative, in that, although the Mayor has no prior Charter violations brought to the attention of the Board, this matter demonstrates multiple violations against him, as discussed in this Final Opinion and Order. When coupled with the Mayor's position as the elected executive of the City, and the clear responsibilities of that Office in the Charter and Administrative Code, the Board finds the Mayor's conduct and inaction untenable as an *elected* leader.<sup>7</sup>

The Board reviewed Subject #3, offered by the Mayor's counsel at the October 30, 2019 hearing, as mitigation evidence to show diligence in the recruitment of an Administrative Services Director. Subject #3 however is 300 pages of responses, resumes, applications and recommendations to the City's employment posting for the Administrative Services Director position, all from or after April 2018. From January 2017 until September 2018, Steckman, the Managing Director, impermissibly held the post of Acting Administrative Services Director, while the Mayor failed to conduct a diligent search to permanently fill the position. The evidence the Mayor elected to submit to the Board demonstrates that not until April 2018, according to Subject #3, did the Mayor begin the search for an Administrative Services Director, well over one year after Encarnacion left her acting position. The Board does not find that to be diligent, nor mitigating.

On the fifth factor, there is little evidence in the record regarding intent by the Mayor. In the Board's view, his conduct can be considered no less than negligent in as much as he is the City's elected chief executive officer, and his duties, and the tenures of his subordinates, are clearly

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<sup>7</sup> This is in stark contrast with Steckman, a hired, appointed administrator, a subordinate of the Mayor whose employment may be terminated by the Mayor.

provided for. The stipulated facts do not provide evidence of willful, intentional or reckless conduct by the Mayor. Likewise, mere oversight or mistake are not applicable. The complete inaction by the Mayor, or what appears to the Board as a surrender of his duties as Mayor, constitutes supine negligence. "The expression 'supine negligence,' though frequently used . . . is infrequently defined. The term is not to be confused with 'gross negligence,' which is negligence of the highest degree. "Supine", as pointed out in the Oxford Dictionary, carries with it the thought of passiveness and inaction rather than active wrongdoing. It means dereliction and inattentiveness to duty; literally, 'lying down.'" *Hollins' Estate*, 29 Pa. D. & C. 307, 317 (Phila. Co. O.C. 1937). In this matter, the Mayor is "lying down," and the elected executive did not exert control or execute the powers and responsibilities of the Office of Mayor granted to him by the people of Reading. This factor militates heavily against Mayor Scott.

The Board addresses the sixth and seventh factors as it has, above, in connection with Mr. Steckman.

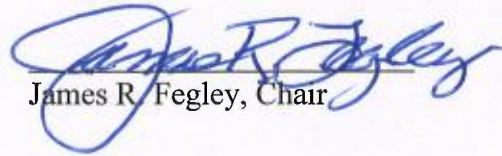
Finally, addressing the last factor, regarding other factors relevant to the Board in determining the type and severity of the penalty, the "buck stops" with the Mayor, the elected executive under Charter, Article III. The people of Reading elected Wally Scott to the Office of Mayor, to serve as provided by the Charter and the laws of the City. The Board weighs this factor against the Mayor as, in connection with this matter, he failed to execute the duties of the office to which the people of Reading elected him.

**IV. ORDER**

The Charter Board enters the Order attached hereto as Exhibit "A" as to Glenn Steckman and the Order attached hereto as Exhibit "B" as to Mayor Scott.

CITY OF READING CHARTER BOARD

By:

  
James R. Fegley, Chair

Date: November 12, 2019



THE CHARTER BOARD OF THE CITY OF READING

IN RE: Investigation of : Complaint Filed: March 11, 2019  
Glenn Steckman and :  
Mayor Wally Scott : Investigation No. 53  
:

**ORDER**

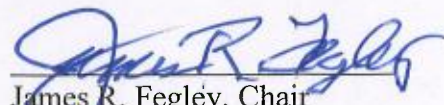
**Glenn Steckman**

AND NOW, this 12<sup>th</sup> day of November, 2019, upon the stipulated facts submitted to the Charter Board of the City of Reading ("Board") in connection with the subject Glenn Steckman ("Steckman") and after considering the arguments of Steckman and the Investigative Officer made on the record on October 15, 2019, the Board finds that Steckman, during his term as Managing Director of the City of Reading, did violate Charter Sec. 406(1), (2), (8) and (9) and Administrative Code Sec. 5-803(A), as more fully set forth in the Board's Final Opinion and Order entered in this matter, to which this Order is appended as Exhibit "A." In accordance with the Final Opinion and Order, it is **ORDERED** that Steckman shall be privately admonished by letter from the Board. Copies of this Final Opinion and Order shall be transmitted to the following:

1. Mr. Glenn Steckman, and his counsel;
2. Frederick T. Lachat, III, Esquire, Acting City Solicitor;
3. Elizabeth Magovern, Esquire, Investigative Officer;
4. Complainant, Ernest H. Schlegel, Jr.

CITY OF READING CHARTER BOARD

By:

  
James R. Fegley, Chair

**EXHIBIT "A"**



THE CHARTER BOARD OF THE CITY OF READING

IN RE: Investigation of : Complaint Filed: March 11, 2019  
Glenn Steckman and :  
Mayor Wally Scott : Investigation No. 53  
:

**ORDER**

**Honorable Wally Scott, Mayor of the City of Reading**

AND NOW, this 12<sup>th</sup> day of November, 2019, upon the stipulated facts submitted to the Charter Board of the City of Reading ("Board"), in connection with the subject, the Mayor of the City of Reading, Wally Scott, ("Mayor Scott") and after considering the arguments of Mayor Scott and the Investigative Officer made on the record on October 30, 2019, the Board finds that Mayor Scott, did violate Charter Sections 301, 308(a), (e), (g), (h), (i), (m) and (n), 603(a) and (b), and 607 and Administrative Code Sec, 5-803(A), as more fully set forth in the Board's Final Opinion and Order entered in this matter, to which this Order is appended as Exhibit "B." In accordance with the Final Opinion and Order, the following is **ORDERED**:

A. The Mayor shall be publicly censured in accordance with the Charter Board Ordinance, Section V(B)(2)(a)(ii)(b), Bill No. 46-2005, *as amended*.

B. The Mayor is fined in the amount of a \$500.00 penalty in accordance with the Charter Board Ordinance, Section V(B)(2)(a)(ii)(f), Bill No. 46-2005, *as amended*, payable within thirty (30) days of the date of this Order;

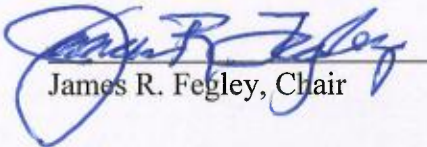
C. The Mayor is fined an administrative fine in the amount of \$1,000.00 to defray the costs of this investigation, in accordance with the Charter Board Ordinance, Section V(B)(2)(a)(ii)(g), Bill No. 46-2005, *as amended*, payable within thirty (30) days of the date of this Order; and

D. Copies of the Charter Board's Final Opinion and Order shall be transmitted to the following:

5. Honorable Wally Scott, Mayor of the City of Reading, and his counsel;
6. Frederick T. Lachat, III, Esquire, Acting City Solicitor;
7. Elizabeth Magovern, Esquire, Investigative Officer;
8. Complainant, Ernest H. Schlegel, Jr.; and
9. Selected media outlets.

CITY OF READING CHARTER BOARD

By:

  
James R. Fegley, Chair